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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

POLAND

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PART I

Introduction

The first periodic report on the implementation by Poland of the provisions of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment covers the period since Poland's ratification of the Convention and its entry into force on 25 August 1989.

This period is characterized by the far-reaching changes in legislation made to create legal guarantees to ensure respect for the civil rights and political freedoms on which a State subject to the rule of law is based.

The work done along those lines has enabled Poland to ratify the Optional Protocol to the International Covenant on Civil and Political Rights and to make substantial progress towards ratifying the European Convention on Human Rights.

At the same time contacts have been maintained with non-governmental organizations such as Amnesty International and the Helsinki Federation of Human Rights and with interpol.

In this context, the incorporation and implementation of the provisions of the Convention constitute an essential factor in the process of transforming the legal system and its practical application. The details of this process are given hereunder.

Although the Polish legal system does not recognize the infliction of torture or other forms of cruel, inhuman or degrading treatment as an explicit offence, such behaviour is inadmissible under the provisions of the Penal Code which define the offences of causing bodily injury or disturbance of health (arts. 155 to 157 and 160) and offences against freedom of the individual (arts. 165 to 167), as well as, subsidiarily, the abuse of power by a public servant (art. 246). The Prison Regulations provide that supervision shall be exercised by the public prosecutor or the judge having jurisdiction over prisons in the case of maltreatment or inhuman or cruel treatment of persons who have been provisionally arrested or convicted (arts. 27 and 29). Under the Code sentences are to be served in a humane manner, with respect for the personal dignity of the prisoner (art. 7, para. 3).

The personal rights of arrested or convicted persons are set forth in the regulations, which were amended in 1990 with a view to improving the legal status of such persons.

Poland ratified the Convention on 9 June 1989. The ratification was not accompanied by any reservations, so that any dispute concerning the interpretation or application of the Convention must be referred to the International Court of Justice.

Ratification of the Convention commits the State to incorporate its provisions into domestic law, so that they can be invoked before the courts and administrative bodies. This possibility is regulated by the provisions of article 10 of the Code of Criminal Procedure, which imposes an obligation to inform participants in proceedings of their rights, and by the provisions of article 9 of the Code of Administrative Procedure, which imposes upon the organs

of the public administration an obligation to ensure that persons participating in proceedings do not suffer any harm arising from ignorance of the law and to provide them with the necessary information. The same stipulations are set forth in article 9 of the Code of Correctional Procedure.

The bodies competent to decide on matters falling under the Convention are, in the first place, the courts and the Public Prosecutor's Office as organs having a constitutional and legal duty to ensure that the law is enforced. This duty is also incumbent upon police organs responsible for protecting the health and lives of citizens, for detecting offences and for prosecuting their perpetrators. Decisions in matters falling under the Convention are also taken by the Ombudsman, who, in matters affecting the protection of the rights and freedoms of citizens, considers whether, following an act or omission by the State organs having an obligation to respect and realize such rights and freedoms, there has been a violation of the law. In order to enhance respect for the law, in 1990 the administrative correctional courts were transferred from the jurisdiction of the Ministry of the Interior to that of the Ministry of Justice. They are now established at district court level and all their decisions may be appealed to an independent court.

The principal remedies available to individuals complaining of torture or other forms of cruel, inhuman or degrading treatment allegedly inflicted upon them, the right to denounce offences to the Public Prosecutor's Office, the courts or the judge having jurisdiction over prisons, and the legal right to bring an action in respect of any behaviour violating the law are not subject to reservations. The action may be brought directly before the hierarchically superior organ, and any incorrectness or delay in considering it is subject to the liability laid down in the legal provisions in force.

In 1989, up to the time when the Convention was ratified, there were cases of unjustified arrests and the striking and wounding of citizens by officials of the police and security forces. Since then such cases have been observed only exceptionally, owing to the fact that more effective action can be taken against abuses committed by officials of the Ministry of the Interior and to the entry into force, on 1 October 1989, of the Act of 29 May 1989 under which complaints against detention may be made to the courts; such complaints must be considered immediately, and any irregularities found must be reported to the higher organs. However, immediately after the prison revolts that took place in December 1989, cases of the striking and wounding of prisoners by prison service officials were reported. They led to the bringing of criminal or disciplinary proceedings against 82 prison service officials, including two prison governors. Disciplinary proceedings against 30 officials have now been concluded and four persons have been dismissed.

PART II

Article 2

1. The Polish legal system and the rules governing the operation of the courts, the Public Prosecutor's Office, the police and administrative correctional tribunals and the prison system lay down conditions for the effective prevention of recourse to torture in the territory of the Republic of Poland.

2. As part of the process of implementing the Convention, the Police Act of 4 April 1990 (Official Gazette No. 40, pos.179) which lays down, inter alia, the disciplinary and criminal liability of policemen, has entered into force. Under the provisions of this Act, a policeman who, in the exercise of his functions, exceeds his competence and powers or fails to perform his duties, thereby violating the personal rights of a citizen, is liable to a term of imprisonment of up to five years.

3. If a policeman performs the act defined in this provision by violating the prohibition on passing information on a citizen obtained in the exercise of his functions to persons or institutions other than the court or Public Prosecutor and uses it against the citizen for a purpose other than the pursuit of justice, he is liable to a term of imprisonment of from one to five years (art. 142, paras. 1 and 2, of the aforementioned Act).

4. The Act provides for a penalty of from one to five years' imprisonment for a policeman who uses force or unlawful threats or moral maltreatment for the purpose of obtaining explanations, depositions or statements (art. 143 of the aforementioned Act).

5. The Act recognizes that a policeman who commits a forbidden act in the execution of an order or instruction does not commit an offence unless he is aware that by agreeing to execute the order or instruction he is committing an offence. In this case the person who gave the order or instruction is responsible for the offence (art. 144 of the aforementioned Act). The superior or commissioned police officer of higher rank who gives the policeman the order or instruction to perform the act constituting the offence is liable to a term of imprisonment of from one to five years. The same definition of the disciplinary and criminal liability of officials of the State Security Office is given in articles 125 to 128 of the State Security Office Act of 6 April 1990 (Official Gazette No. 30, pos. 180).

6. Under the current reform of the criminal law, many new institutions and arrangements are envisaged for further guaranteeing the proper implementation of the provisions of the Convention. In order to eliminate cruel or inhuman punishment the draft new Penal Code provides for the abolition of the death penalty and its replacement by a penalty of 25 years' rigorous imprisonment and, exceptionally, a penalty of life imprisonment for the most serious crimes such as genocide and murder. The draft also entails a general liberalization of penalties and the limitation of the threat and imposition of the penalty of rigorous imprisonment. The draft Code of Criminal Procedure provides for a more effective protection of the interests of accused persons, injured parties and witnesses, as well as for a more effective supervision of preparatory proceedings, which will no longer be conducted by the Public Prosecutor but by an independent court. The draft Penal Code tends to protect the rights of persons deprived of their freedom, in particular by

strengthening supervision by the judge having jurisdiction over prisons and by extending the scope of such supervision and its effective application. At the same time the draft envisages a limitation of the powers of the prison services during the serving of sentences and, in particular, during pre-trial detention.

Article 3

7. Pursuant to the rules laid down in chapter 56 of the Code of Criminal Procedure, in the case of an application for the extradition of a person sought by an organ of a foreign State for the purpose of instituting criminal proceedings against him or of making him serve the penalty imposed, the Public Prosecutor hears the person concerned and refers the case to the competent provincial court.

8. The provincial court gives, at a sitting, its opinion on the application made by the foreign State. Before it gives its opinion the person whose extradition is sought must have an opportunity of providing explanations, orally or in writing. The court transmits the file with its opinion to the Procurator-General of the Republic of Poland, who notifies his decision to the relevant organ of the foreign State.

9. If from the consideration of the application, particularly the opinion given by the provincial court in its capacity as an independent court, account being taken of the explanations provided by the person whose extradition is sought and of the decision taken by the Procurator-General, it is possible to deduce, on serious and acceptable grounds, that the person whose extradition is sought might be subjected to torture in the State requesting his extradition, the application will be rejected. The confirmed occurrence of regular cases of gross, flagrant and mass violations of human rights constitutes a very important element to be taken into consideration when such an application is considered.

Article 4

10. The provisions of the Convention have also led to the introduction, in the new draft Penal Code, of a category of offences consisting of the use of force by a public servant against another person for the purpose of obtaining depositions, explanations or statements. The proposed article 248 is broad in scope, since it covers the use of force, threats of the use of force or other forms of physical and mental maltreatment.

11. The provisions of article 249 protect a person lawfully deprived of his freedom against torture and relate to the liability of both public servants and fellow detainees. The draft protects a prisoner by establishing the liability of a public servant for tolerating the maltreatment of a person deprived of his freedom or subject to the supervision of the public servant.

12. The penalties imposed for this category of offences take into account their serious nature (art. 248 - imprisonment of from six months to eight years, art. 249 - imprisonment of from three months to five years).

Article 5

13. The 1969 Penal Code stipulates that Polish criminal law applies to the perpetrators of offences committed in the territory of Poland and on ships at sea or on aircraft (art. 3 of the Penal Code).

14. Polish criminal law applies to persons of Polish nationality who have committed an offence abroad (art. 113 of the Penal Code) and to persons of foreign nationality who have committed an offence abroad and liability for which depends upon the recognition of such an act as an offence by the law in force at the place where the act was committed (art. 114 of the Penal Code).

15. Apart from the provisions in force at the place where the offence was committed, Polish criminal law applies to persons of foreign nationality in the case of offences in respect of which criminal proceedings are instituted pursuant to international agreements (art. 115 of the Penal Code).

16. The new draft Penal Code provides that Polish criminal law applies to persons of foreign nationality who have committed abroad an offence against the property or interests of the Polish State, or an individual or corporation of Polish nationality.

Article 6

17. The Code of Criminal Procedure lays down the rules governing, inter alia, the initiation of criminal proceedings. Under these rules preparatory proceedings are initiated where there is a justified suspicion that an offence has been committed (art. 255 of the Code of Criminal Procedure).

18. In the case of the detention of a person charged with an offence, the duration thereof and the ground therefor must be stated in writing and notified to the person concerned, who must be informed of his right to complain to the court against his detention. At the request of the detained person, his next of kin or any other person designated by him or his employer or school must be advised. The detained person has the right to complain against the detention to the territorially competent district court. The court considers the complaint without delay. If the detention is groundless, the court orders the detained person's immediate release and notifies its decision to the organ exercising supervision over the organ which made the detention. In this case, the detained person is entitled to compensation for the damage suffered and to reparation from the State Treasury.

19. Preventive measures to ensure the regular conduct of the proceedings can be taken if the evidence assembled against the accused adequately proves that he committed the offence (art. 209 of the Code of Criminal Procedure).

20. The Public Prosecutor may order pre-trial detention for a period not exceeding three months, and a complaint against his decision may be lodged with the court. If the preparatory proceedings cannot be concluded within that period owing to the special circumstances of the case, the competent court may order an extension of the pre-trial detention for a period of one year. Any extension beyond that period may be ordered only by the Supreme Court, at the request of the Procurator-General, in exceptional and justified cases for a strictly defined period necessary for concluding the investigation. A complaint may be lodged against the court's decision to extend the pre-trial detention with the court of second instance.

21. Every case involving the pre-trial detention of a person of foreign nationality is notified immediately to the competent consulate of the country concerned or, failing that, to that country's diplomatic mission (art. 539 of the Code of Criminal Procedure). The new draft Code of

Criminal Procedure provides that pre-trial detention may be imposed only by a court decision.

Article 7

22. Under the principle in force in Polish criminal procedure, anybody who is aware of an offence in respect of which criminal proceedings must be initiated has a duty to inform the Public Prosecutor or the police.

23. Public and social institutions which, by the nature of their activities, are aware of an offence in respect of which criminal proceedings must be initiated have an obligation to inform immediately the Public Prosecutor or the police and to take immediate action, pending the arrival of the prosecuting organ or its decision regarding the relevant arrangements, to prevent the disappearance of the traces or evidence of the offence (art. 256 of the Code of Criminal Procedure).

24. The Public Prosecutor has an obligation to bring proceedings in the case of an offence in respect of which criminal proceedings must be initiated, and the police are subject to the same obligation (art. 5 of the Code of Criminal Procedure). The rules relating to judgements concerning offences covered by the Convention are the same as in the case of a serious common law offence. This principle also applies to the rules of penal procedure concerning substantive criminal law, including the rules relating to the amount of the penalty and the enforcement procedure. Anybody prosecuted for this category of offences enjoys full guarantees of fair treatment at all stages of the proceedings.

Article 8

25. Since the ratification of the Convention, Poland has entered into no new extradition agreements. The obligations and rules referred to in article 7 are observed by all public organs that consider applications for extradition.

Article 9

26. Assistance in all criminal proceedings concerned with the offences covered by the Convention is given pursuant to the rules laid down in chapter 54 of the Code of Criminal Procedure.

27. As part of judicial assistance, acts necessary for criminal proceedings may be carried out, including the notification of documents to persons residing abroad or to institutions having their headquarters abroad, the hearing of accused persons, witnesses or experts, investigations, searches of premises and persons, the seizure of objects and their delivery abroad, the summoning of persons residing abroad to appear in person and voluntarily before the courts or the Public Prosecutor with a view to their being heard as witnesses or in identification proceedings, as well as the production of prisoners and of files, documents and information on the police records of accused persons. The courts and public prosecutors may grant judicial assistance at the request of courts and public prosecutors of foreign countries.

28. A witness or expert of foreign nationality summoned from abroad who appears voluntarily before a court may not be prosecuted, held or detained in custody for an offence in respect of which criminal proceedings have been initiated or for an offence committed before the Polish frontier was crossed.

Neither may a sentence imposed for such an offence be enforced. Judicial assistance is provided under agreements for mutual judicial assistance made between States signatories to the Convention.

Article 10

29. Documentation and information on the prohibition of torture are included in the training programmes of civilian or military personnel of the judiciary and of other persons likely to take part in the supervision or examination of persons subjected to any form of arrest, detention or imprisonment or in the proceedings concerning them.

Article 11

30. The work done on reforming the Penal Code also relates to the Prison Regulations, which lay down the rules for the serving of terms of imprisonment. The purpose of the reform, the conception of which has been radically changed since September 1989, is to define a prisoner's status by an exact determination of the rights and obligations of complainants, while respecting the United Nations Standard Minimum Rules for the Treatment of Prisoners, the individualization of social rehabilitation methods and measures, particularly in the case of minors, women and the perpetrators of involuntary offences, the strengthening of the role of the courts and of judges having jurisdiction over prisons during the serving of the sentence, an attenuation of the effects of isolation, and an improvement of prisoner's living conditions.

31. Without waiting for the adoption of the new Prison Regulations, on 23 February 1990 the Diet approved the Prison Regulations Amendment Act. The amendments made by this Act place on a footing of equality periods of work completed by the prisoner and work done outside, guarantee the right to remuneration for work done and abolish the so-called "hard bed" penalty as a disciplinary measure. Prisoners now have the right to complain against decisions of the prison administration to the court having jurisdiction over prisons.

32. These matters were also taken up in the order of the Ministry of Justice dated 2 May 1989 on the rules for serving terms of imprisonment (Official Gazette No. 31, pos. 166), which entered into force on 1 October 1989. This order replaces the 1974 provisional rules for serving terms of imprisonment. The new rules attenuate the arrangements for the serving of sentences in the case of adolescents, women, persons sentenced for involuntary offences, prisoners suffering from psychological problems, prisoners who are mentally ill, alcoholics, drug addicts and physically handicapped prisoners.

33. The new regulations increase the remuneration paid to prisoners, introduce new rewards such as telephone conversations with close relatives and 24-hour passes for leave outside the prison, and limit the application of regulation penalties. The penalty of solitary walks and the limitation or deprivation of the right to correspondence have now been abolished. Food parcels are now considered to be an entitlement of the prisoner and no longer a privilege.

34. Persons held in pre-trial detention are subject to the provisions of the order of the Ministry of Justice dated 2 May 1989 on the rules governing pre-trial detention (Official Gazette No. 31, pos. 167), which entered into force on 1 October 1989. Based on the principle of the presumption of innocence, the only restrictions allowed on the rights of persons held in

pre-trial detention are those necessary for the maintenance of order and security in the place of detention and the protection of persons held in pre-trial detention against demoralization, as well as for guaranteeing the proper conduct of the criminal proceedings. A person held in pre-trial detention is entitled to possess, in his cell, objects of personal use and objects needed for the practice of his religion. The daily food supply is of at least 3,200 calories. A person held in pre-trial detention who is employed for remuneration receives 100 per cent of his wage. If he continues to be remunerated for his usual employment, he is entitled to only 50% of his wage for work done in the place of detention. He is entitled to his own clothing and footwear, may purchase foodstuffs and tobacco with the monies deposited, and may receive one food parcel of 5 kg per month. The regulations limit to an indispensable minimum the range of penalties that may be applied against a person in pre-trial detention for violating orders and prohibitions emanating from the regulations and from the arrangements in force in the place of detention.

35. Within the scope of their competence, judges having jurisdiction over prisons and public prosecutors supervise the serving of terms of imprisonment or pre-trial detention and the observation of the rights and obligations of prisoners. Up to December 1988, judges made 95 inspections; in 1987 they made 138. In 1987 supervision resulted in the cancellation or revision of 810 decisions of the prison commissions. Apart from inspections, judges having jurisdiction over prisons and public prosecutors interview prisoners with regard to their applications for release from prison on parole. Prisoners' complaints and applications are generally concerned with disciplinary penalties imposed, medical assistance, and working and equipment conditions. in 1987 the public prosecutors inspected 136 prisons, including 46 places of detention for prisoners awaiting trial; in 1988 they inspected 130 prisons, including 56 places of detention for prisoners awaiting trial.

36. Since 1 November 1956, prisons and places of detention for prisoners awaiting trial have been under the jurisdiction of the Ministry of Justice. Nevertheless, the Prison Regulations have allowed an exception by stipulating that, pending the creation of a sufficient number of places of detention for prisoners awaiting trial, the Public Prosecutor may order pre-trial detention, for a period not exceeding three months, on premises of the militia, the military frontier guards or the internal military services. In exceptional cases convicted prisoners serving a sentence of imprisonment may be detained on these premises pursuant to a decision by a judge having jurisdiction over prisons, for a period not exceeding six months.

37. It was found that this rule was not being respected, since the number of places of detention for prisoners awaiting trial under the jurisdiction of the Ministry of Justice was diminishing while the number of such places on militia premises was increasing. In mid-February 1989 the Ombudsman, in collaboration with deputies and his staff, inspected places of detention on militia premises in seven provinces. The inspection revealed the poor conditions obtaining there, the detention of three persons beyond 48 hours, and the priority given to the defensive functions of pre-trial detention. A detailed report with conclusions was transmitted to the Minister of the Interior and the Minister of Justice, among others. Implementation of all the conclusions of the report was supported by the Polish Committee on Human Rights in the communiqué which it sent to the Minister of Justice, the Minister of the Interior and the Procurator-General. Further to the report, on 4 August 1989 the

Procurator-General issued directives restricting the placing of prisoners awaiting trial in places of detention on militia premises in localities where there are places of detention under the jurisdiction of the Ministry of Justice.

38. The problem was finally resolved by the aforementioned Act of 23 February 1990 amending the Prison Regulations, which provides for the abolition of places of detention for prisoners awaiting trial on militia premises within three months from the date of the Act's entry into force.

39. Before September 1989 the supervision of prison activities by social workers and the participation of social organizations in the prison-sentence-serving process were still at the verbal declaration stage. Although the Minister of Justice's order of 2 May 1989 on the regulations for serving terms of imprisonment confirmed access to prisons and contemplated the participation of institutions and organizations whose statutory purpose is to provide assistance to prisoners and their families in the social rehabilitation process, social supervision was not very effective because access to prisons by independent persons was strictly controlled. Only after September 1989 were conditions conducive to the active participation of prisoners' aid organizations introduced. Among them we can mention the reactivated Employers' Prison Association.

Article 12

40. The speediness and impartiality of the organs responsible for making preliminary investigations are guaranteed by the system of deadlines prescribed for criminal proceedings and the rules on which such proceedings are based.

41. The Code of Criminal Procedure establishes in detail the length of detention, of pre-trial detention and of the preliminary proceedings and the deadlines for applying for remedies. The Public Prosecutor has an obligation to ensure that all preparatory proceedings are carried out in a regular and reliable manner. In the exercise of his supervision the Public Prosecutor may, inter alia, take cognizance of the intentions of the judge responsible for the criminal proceedings, give directions for the proceedings and issue orders relating thereto. The organs responsible for the criminal proceedings have an obligation to consider and take account of both attenuating and aggravating circumstances.

42. Judges reach their decisions on the basis of their well-founded conviction, the taking of evidence and their free opinion, taking into account their knowledge and experience.

43. A judge may be challenged under the law

(a) if the case concerns him directly;

(b) if he is the spouse of the party concerned, of the injured person or their defence counsel, attorney or legal representative;

(c) if he is related by blood or marriage in the direct line or in the collateral line between siblings of the persons designated in sub-paragraph (b) or if he is connected with one of those persons by adoption, guardianship or trusteeship;

(d) if he has been a witness to the event constituting the subject-matter of the case or, in the same case, he has been questioned as a witness or has participated as an expert;

(e) if he has participated in the case as a public prosecutor, defence counsel, attorney or legal representative of the party concerned or social representative or if he conducted the preparatory proceedings;

(f) if he participated in a lower court in the decision impugned or if he took the decision impugned;

(g) if he had participated in the taking of the rejected decision and the case referred for review.

44. The grounds for challenging a judge persist even if the marriage, adoption, guardianship or trusteeship no longer exist. A judge who participated in the taking of the decision in a case whose reopening has been requested or in respect of which an application for special review has been made may not decide on the request or review. A judge may also be challenged if, between him and one of the parties, there is a personal relationship likely to jeopardize the judge's impartiality. These rules also apply to assessors, public prosecutors and persons responsible for preparatory proceedings.

Article 13

45. Under the law in force, any person who states that he has been tortured in Polish territory has the right to complain to the competent authorities and to have his complaint promptly and impartially examined. This right is reflected in the unlimited possibility of denouncing the offence to the Public Prosecutor's Office, the courts or the judge having jurisdiction over prisons.

46. Any person also has the right to lodge an appeal relating to any behaviour constituting a violation of the law. The appeal may be lodged directly with the hierarchically superior organ, and any incorrectness or delay in examining it is subject to the liability provided for by law.

Article 14

47. The Polish legal system fully guarantees the right of a victim of torture to redress and to fair and adequate compensation.

48. Personal property and health, freedom and honour are protected by the civil law independently of any other protection provided for in other legal provisions. This protection is based on article 23 of the Civil Code.

49. A person whose personal property is threatened by the activities of another may call for the cessation of such activities. If a violation has been committed, he may also call upon the person who committed the violation to perform the acts needed to eliminate its effects and in particular to file a statement with the required contents and form.

50. If the violation of personal property gave rise to material damage, the injured party may call for redress under the general rules (art. 24 of

the Civil Code). The Code of Criminal Procedure also guarantees the rights of the injured party. The latter, as a person whose lawful property has been directly violated or threatened, by the offence, may secure his rights by intervening as a subsidiary or private accuser.

51. The injured party also has the right, pending the opening of the main hearing in the trial, to bring a civil action against the accused with a view to pursuing, in criminal proceedings, the material claims arising directly from the offence committed (art. 52 of the Code of Criminal Procedure). In the event of the death of the injured party, the civil action to secure the material claims arising from the offence committed may be brought against the accused by the spouse, the relatives in direct line or the siblings of the injured party, as well as by the adoptive parent and the adoptive child.

52. The Code of Criminal Procedure also contains provisions concerning compensation for unjust conviction, arrest or detention. An accused person who, following the reopening of the proceedings or a special review thereof, has been acquitted or convicted pursuant to a less severe provision, is entitled to compensation for the damage suffered and to amend for the loss arising from the total or partial execution of the penalty which he ought not to have incurred.

53. In the event of the death of the accused, the right to compensation devolves upon the person who, as a result of the execution of the clearly unlawful penalty or pre-trial detention, has lost the support which was due to him under the law or which had been permanently provided to him by the deceased person, if the grant of compensation is justified on valid grounds.

54. In the event of the death of an accused person who has, during his lifetime, applied for compensation, the right to claim compensation devolves upon the spouse, children and parents (art. 490 of the Code of Criminal Procedure).

Article 15

55. The Code of Criminal Procedure specifies the rules concerning the conduct of hearings in such a way as to ensure that the person being questioned has an opportunity to express himself freely within the limits established by the purpose of those proceedings; only subsequently may he be asked questions designed to supplement, elucidate or verify the depositions. The provisions of article 157 of the Code of Criminal Procedure implement directly the commitment entered into under the Convention, since they stipulate that explanations, depositions and statements made in circumstances in which it was impossible for the person concerned to express himself freely may not be regarded as evidence.

Article 16

56. The draft new Penal Code introduces, in the chapter dealing with offences against the administration of justice, a category of offences consisting of recourse to force by a public servant against another person for the purpose of obtaining depositions, explanations or statements. This provision (art. 248) provides that a public servant who, in order to obtain depositions, explanations or statements resorts to force or unlawful threats or who in any other way physically or mentally maltreats another person is liable to a term of imprisonment of from six months to eight years. A prisoner is similarly protected, since article 249, paragraph 1, stipulates that a person who physically or mentally maltreats a person lawfully deprived of his liberty is

liable to a term of imprisonment of from three months to five years. A public servant who does not oppose the maltreatment of a prisoner or a person subject to his supervision is liable to the same penalty.